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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/912,383 | 07/26/2001 | Michael J. Noe | 049050-5012 | 5043 |

7590 12/14/2004

Mr. James Hao
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EXAMINER

ZHONG, CHAD

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2152

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|---------------------------------|--|
| Office Action Summary | Application No. 09/912,383 | Applicant(s) NOE, MICHAEL J. | |
| | Examiner Chad Zhong | Art Unit 2154 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) * | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-13 are presented for examination.
2. It is noted that although the present application does contain line numbers in specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.
3. Applicant is required to update the status (pending, allowed, etc.) of all parent priority applications in the first line of the specification. The status of all citations of US filed applications in the specification should also be updated where appropriate.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-2, 4-8, 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Roberts et al. (hereinafter Roberts), US 2002/0110149.
6. As per claim 1, Roberts teaches a client-based method for managing transfer of a file having data from a networked device to a client system having a network connection, comprising the steps of:
 - (a) monitoring utilization of the network connection (Fig 7);

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(b) determining whether to receive data based on the utilization of the network connection (Fig 7);

(c) if step (b) determines to receive data, receiving data from the networked device using the method comprising:

(i) determining whether to adjust an amount of data received in a current iteration (abstract);

(ii) if step (i) determines to adjust the amount of data received, adjusting the amount of data to receive according to the type of network connection (abstract, Fig 10); and

(iii) receiving the amount of data;

(d) if step (b) determines not to receive data, pausing a predetermined amount of time before proceeding ([0085]); and

(e) repeating steps (a)-(d) until all data in the file is received ([0011]).

7. As per claim 2, Ernst teaches the method of claim 1, further comprising the step of determining a speed of the network connection ([0015]).

8. As per claim 4, Ernst teaches the method of claim 1, wherein the step of monitoring the utilization of the network connection includes the step of determining how much data has been transferred through the network connection per unit of time ([0011]).

9. As per claim 5, Ernst teaches the method of claim 1, wherein the step of determining whether to receive data based on the utilization of the network connection includes the step of comparing the network utilization to a threshold noise parameter defined according to the type of network connection (abstract; [0086], wherein the network activity/traffic within the channel is defining the noise threshold according to the specification of current invention pg 9. Accordingly, the threshold of current invention is used for the same purpose as the noise threshold of the Applicant, that is, to adjust the amount of data sent across the network).

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10. As per claim 6, Ernst teaches the method of claim 5, wherein the threshold noise parameter may be statically, dynamically, or user configurable ([0049]).

11. As per claim 7, Ernst teaches the method of claim 1, wherein the step of determining whether to adjust the amount of data received in the current iteration includes determining whether the monitoring of the network connection in a previous iteration resulted in data being received ([0011]; Fig 7).

12. As per claim 8, Ernst teaches the method of claim 1, wherein the step of adjusting the amount of data to receive according to the type of network connection includes adjusting a buffer parameter that determines how many times a receiving buffer is read in the current iteration ([0084]; [0067]).

13. As per claim 11, Ernest teaches the method of claim 8, wherein the step of adjusting a buffer parameter that determines how many time a receiving buffer is read in the current iteration includes resetting the buffer parameter to a predetermined minimum value when the monitoring of the network connection in the previous iteration resulted in data not being received ([0061]).

14. As per claim 12, claim 12 is rejected for the same reasons as rejection to claim 1 above.

15. As per claim 13, Ernst teaches a system for managing the transfer of a file having data from a networked device to a client system, comprising:

means for suspending the receiving of data when utilization of the network connection is not below the threshold parameter and monitoring the utilization of the network connection (Col. 8, lines 5-20).

The remainder section of claim 13 is rejected for the same reasons as rejection to claim 1 above.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 3, 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al. (hereinafter Roberts), US 2002/0110149, in view of 'Official Notice'.

18. As per claim 3, Ernst teaches the method of claim 1, further comprising the step of defining a size of a receiving buffer according to the type of network connection ([0014], [0084] wherein the buffer size is adjusted dynamically in accordance with the block size as there is a direct correlation between the two parameters, furthermore, it would have been obvious to the person ordinary skilled in the art at the time of the invention to adjust the buffers size in order to save memory resources).

19. As per claim 9, Ernst teach the method of claim 8, wherein the step of adjusting a buffer parameter that determines how many times a receiving buffer is read in the current iteration includes incrementing the buffer parameter when monitoring of the network connection in the previous iteration resulted in data being received ([0084], wherein the buffer size is adjusted dynamically in accordance with the block size as there is a direct correlation between the two parameters, furthermore, it would have been obvious to the person ordinary skilled in the art at the time of the invention to adjust the buffers size in order to save memory resources).

20. As per claim 10, Ernst teaches the method of claim 9, wherein the buffer is incremented until a predetermined maximum buffer value is achieved (abstract; [0085], wherein the buffer size is adjusted dynamically in accordance with the block size as there is a direct correlation between the two parameters, furthermore, it would have been obvious to the person ordinary skilled in the art at the time of the invention to adjust the buffers size in order to save memory resources).

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents and publications are cited to further show the state of the art with respect to

“METHOD AND SYSTEM FOR ADAPTIVELY DOWNLOADING DATA FROM A NETWORK DEVICE”.

- | | | |
|-------|-----------------|-----------------|
| i. | US 2003/0095302 | Schuster et al. |
| ii. | US 2002/0052967 | Goldhor et al. |
| iii. | US 5909443 | Fichou et al. |
| iv. | US 2002/0107667 | Mathiske et al. |
| v. | US 6681387 | Hwu et al. |
| vi. | US 6442138 | Yin et al. |
| vii. | US 5572674 | Ernst |
| viii. | US 6690646 | Fichou et al. |
| ix. | US 6680910 | Ni |

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chad Zhong whose telephone number is (703) 305-0718. The examiner can normally be reached on M-F 7am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A Follansbee can be reached on 703-305-8498. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Dung C. Dinh
Primary Examiner

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October 19, 2004